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IN THE
COURT OF APPEALS OF INDIANA

GREGORY A. BUCKINGHAM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 38A02-0610-CR-948
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JAY CIRCUIT COURT
The Honorable Brian D. Hutchinson, Judge
Cause No. 38C01-0603-FB-6

July 5, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Gregory A. Buckingham appeals his convictions for six counts of Dealing in a Schedule II Controlled Substance,[1] a class B felony, four counts of Dealing in a Schedule IV Controlled Substance,[2] a class C felony, and Reckless Homicide,[3] a class C felony. Buckingham argues that the trial court erroneously refused to admit a videotaped interview between Buckingham and police officers into evidence and that the evidence is insufficient to sustain his convictions. He also argues that the sentences imposed by the trial court are inappropriate in light of the nature of the offenses and his character. Finding no reversible error, we affirm the judgment of the trial court.

FACTS

At approximately 5:00 p.m. on November 2, 2005, Darren Delk and Gary Gray went to Buckingham's trailer in Jay County. Buckingham offered Delk and Gray some methadone, and they accepted. After an hour, Buckingham gave each man another methadone tablet. Altogether that day, Buckingham gave each man three methadone tablets, all of which they consumed.

The next day, Delk and Gray returned to Buckingham's trailer at approximately 1:00 p.m., and Buckingham gave each man two methadone tablets, which they consumed. About an hour later, Buckingham gave each man another methadone tablet. Later, he offered the men two Valium pills each, which they accepted and took. Delk and Gray spent the night in Buckingham's trailer.

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[1] Ind. Code § 35-48-4-2(a)(1).

[2] I.C. § 35-48-4-3(a)(1).

The next day, Delk and Gray awoke around 1:00 p.m., at which time Buckingham gave them each another methadone tablet, which they took. After a meal, each man took another methadone tablet given to them by Buckingham. Gray noticed that Delk "kept dozing off." Tr. p. 220. Around 5:00 p.m., Buckingham gave each man two Valium pills, which they took. By the end of the day, Buckingham had given each man three methadone tablets. At around 7:00 p.m., Delk "dozed off," id. at 224, and at some point during the night, Delk died.

Delk's cause of death was determined to be a multi-drug overdose, with the primary culprit being methadone. There was a lethal concentration of methadone in Delk's bloodstream. Additionally, Delk's blood contained oxazepam, a compound into which Valium is "broken down" inside the human body. Id. at 291, 297-98.

On March 24, 2006, the State charged Buckingham with fourteen counts of class B felony dealing in a schedule II controlled substance, twelve counts of class C felony dealing in a schedule IV controlled substance, two counts of class D felony unlawful sale of legend drugs, class C felony involuntary manslaughter, and class C felony reckless homicide. Six of the class B felony dealing counts involved the delivery of methadone and six of the class C felony dealing counts involved the delivery of oxazepam.

Buckingham's jury trial began on August 15, 2006. On August 16, the State dismissed four counts of class B felony dealing and eight counts of class C felony dealing. On that same day, the trial court granted Buckingham's motion to dismiss the two counts of

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[3] Ind. Code § 35-42-1-5.

class C felony unlawful sale of legend drugs. Also on August 16, the jury found Buckingham guilty of six counts of class B felony dealing, four counts of class C felony dealing, and class C felony reckless homicide, and acquitted Buckingham on the remaining charges.

On September 26, 2006, following a sentencing hearing, the trial court sentenced Buckingham to fifteen years imprisonment for each class B felony dealing conviction, six years imprisonment for each class C felony dealing conviction, and six years imprisonment for reckless homicide. The trial court ordered that three of the fifteen-year sentences would be served consecutively, with the remaining three served concurrently, that the four six-year sentences for dealing would be served concurrently with the fifteen-year sentences, and that the six-year sentence for reckless homicide would be served consecutively to the other sentences. Thus, the trial court imposed an aggregate sentence of fifty-one years imprisonment on Buckingham, who now appeals.

DISCUSSION AND DECISION

I. Videotape

Buckingham first argues that the trial court erroneously refused to admit a videotape of an interview between Buckingham and police officers into evidence. Specifically, Buckingham argues that because a police officer who was present at the interview offered testimony regarding the content of the interview, the doctrine of completeness requires that the full videotape be admitted into evidence.

Initially, we observe that Buckingham did not offer the doctrine of completeness as a basis for his objection to the exclusion of this evidence at trial. Consequently, he has waived this argument on appeal. Fennell v. State, 698 N.E.2d 823, 825-26 (Ind. Ct. App. 1998).

Waiver notwithstanding, we note that the doctrine of completeness has been incorporated into the Indiana Evidence Rules as Rule 106: "When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require at that time the introduction of any other part or any other writing or recorded statement which in fairness ought to be considered contemporaneously with it." See Sanders v. State, 840 N.E.2d 319, 322 (Ind. 2006) (observing that the doctrine of completeness is embodied by Evidence Rule 106). Essentially, this rule is designed "to avoid misleading impressions caused by taking a statement out of its proper context or otherwise conveying a distorted picture by the introduction of only selective parts of the document [or videotape]." Walker v. Cuppett, 808 N.E.2d 85, 97 (Ind. Ct. App. 2004). The rule may be invoked to admit otherwise excluded portions of the evidence to "'(1) explain the admitted portion; (2) place the admitted portion in context; (3) avoid misleading the trier of fact; or (4) insure a fair and impartial understanding of the admitted portion.'" Id. (quoting Lieberenz v. State, 717 N.E.2d 1242, 1248 (Ind. Ct. App. 1999)).

Here, the State offered neither the videotape of the interview between Buckingham and police officers nor a transcript thereof into evidence. Instead, one of the police officers testified about that conversation. Thus, Evidence Rule 106, which governs only writings and

recorded statements, does not apply. The trial court, therefore, did not abuse its discretion in refusing to admit the videotape into evidence.[4]

II. Sufficiency of the Evidence

Buckingham argues that there is insufficient evidence supporting his convictions. When reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the witnesses' credibility. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995). Instead, we will examine the evidence and the reasonable inferences that may be drawn therefrom that support the verdict. Id. We will affirm the conviction if evidence of probative value exists from which the factfinder could have found the defendant guilty beyond a reasonable doubt. Id.

A. Dealing in Oxazepam

To convict Buckingham of dealing in Oxazepam, a Schedule IV controlled substance, the State was required to prove beyond a reasonable doubt that Buckingham knowingly or intentionally delivered Oxazepam. I.C. § 35-48-4-3. A "delivery" is "the giving or yielding possession or control of something to another." Black's Law Dictionary 440 (7th ed.).

The State's expert toxicologist testified as follows:

> Valium is the trade name for Diazepam. In the body Valium is broken down to Oxazepam and then Oxazepam is further broken down to Temazepam. And what we found in this particular case, we found Oxazepam and Temazepam and so because we have both of those

[4] Buckingham also argues that the videotape should have been admitted under the excited utterance exception to the general rule barring hearsay evidence. Ind. Evidence Rule 803(2). He offers no evidence, however, in support of his bald statement that Buckingham was "clearly" still under the stress of Delk's death at the time the interview took place. Appellant's Br. p. 22. Consequently, we find that the trial court properly refused to admit the videotape pursuant to the excited utterance exception.

> present that means in my opinion that the person ingested Valium and in the body those Valium or Diazepam was broken down to form Temazepam and Oxazepam.

Tr. p. 297-98. The undisputed evidence at trial established that Buckingham delivered Valium—Diazepam—to Delk and Gray. But for some unknown reason, the State charged Buckingham with delivery of Oxazepam rather than Diazepam. Both drugs are Schedule IV controlled substances. Essentially, Buckingham argues that because his delivery of Diazepam was complete upon handing the drug to Delk and Gray and because Diazepam does not break down to form Oxazepam until the drug is ingested, the State did not provide sufficient evidence that he delivered Oxazepam to Delk and Gray.

It would, perhaps, have been preferable for the State to have charged Buckingham with delivery of Diazepam rather than Oxazepam. But as noted above, both drugs are Schedule IV controlled substances and neither holds a potential for a greater sentence or more serious conviction than the other. It is undisputed that Diazepam becomes Oxazepam when ingested. It is also undisputed that Buckingham delivered Diazepam to Delk and Gray. Under these circumstances, we find that Buckingham was not prejudiced when the State charged and the jury convicted him of dealing in Oxazepam, a Schedule IV controlled substance and that the State presented sufficient evidence to support the convictions.

B. Dealing in Methadone

To convict Buckingham of dealing in Methadone, a Schedule II controlled substance, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally delivered Methadone to Gray and Delk. I.C. § 35-48-4-2. In support of these convictions, the State offered the testimony of Gray, who stated that Buckingham provided Gray and

Delk with Methadone, and the testimony of a pathologist, who concluded that Delk's blood contained a lethal concentration of Methadone. The State did not introduce the Methadone itself into evidence because Delk and Gray consumed all of the drugs.

Buckingham concedes that a defendant may be convicted for dealing in a controlled substance even if no contraband is found or introduced into evidence at trial. Jones v. State, 807 N.E.2d 58, 63 (Ind. Ct. App. 2004). He argues, however, that under these circumstances, the State was required to offer expert testimony establishing that the substance that Buckingham gave to Gray and Delk was, in fact, Methadone. A drug user may qualify as an expert with respect to a certain drug with which he has experience. Copeland v. State, 430 N.E.2d 393, 396 (Ind. Ct. App. 1982). Here, however, Gray—offering the only direct evidence that Buckingham provided Methadone to the two men—did not testify that he had any past experience purchasing or consuming Methadone. Consequently, Buckingham argues that Gray's testimony is insufficient.

In Slettvet v. State, our Supreme Court considered a case in which the defendant had been convicted of possession of a dangerous drug—LSD—based solely on the testimony of one witness who did not consume the drug and had no past experience with or personal knowledge regarding LSD. 258 Ind. 312, 313, 280 N.E.2d 806, 807 (1972). The court reversed Slettvet's conviction based on insufficient evidence:

> The question is whether there was sufficient competent evidence that what appellant possessed was LSD or, for that matter, any dangerous drug at all. The answer must be an emphatic no. The only evidence as to the substance was the hearsay evidence that the pills were "purple haze acid." The State's only witness had no previous experience with drugs at all and was certainly not an expert. LSD is a colorless,

> tasteless, and odorless substance so that none of these characteristics can be a basis for identifying the substance. Apparently no pills were found in appellant's possession by the police as none were submitted into evidence and no police officers testified. The only testimony which could possibly shed any light as to the nature of the substance possessed was the witness' testimony concerning her husband's apparent reaction to the consumption of these pills. Appellant was never seen by the witness taking any pills. Unlike drunkenness caused by alcohol, to which a layman can form an opinion, we cannot say that the reactions to LSD are within the knowledge of the general public. It can be nothing more than conjecture by the jury that the actions of the witness' husband were the result of the consumption of a dangerous drug.
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> The State contends that proof of the nature of the substance can be proved by circumstantial evidence and we agree with this contention. However, when the drugs themselves are not placed into evidence and there is no expert testimony based on a chemical analysis, then there must be testimony of someone sufficiently experienced with the drug indicating that the substance was indeed a dangerous drug.

Id. at 315-16, 280 N.E.2d at 808 (emphasis added) (citations omitted).

The State emphasizes that it did offer expert testimony based on a chemical analysis of the content of Delk's blood. Buckingham responds that the Slettvet court intended that to mean a chemical analysis of the drug itself rather than another substance. While that may be true, the crime in Slettvet was mere possession. Here, however, Buckingham was convicted of dealing, which required delivery of the substance to Delk. Under these circumstances, we find that Gray's testimony that Buckingham provided the men with Methadone[5] and the pathologist's undisputed testimony that Delk had a lethal concentration of Methadone in his

[5] Buckingham's arguments regarding Gray's history as a drug abuser and his inability to identify Methadone visually are mere requests that we judge Gray's credibility—a practice in which we do not engage when we evaluate the sufficiency of the evidence.

bloodstream is sufficient circumstantial evidence to support Gray's conviction for dealing in a Schedule II controlled substance.

C. Reckless Homicide

To convict Buckingham of reckless homicide, the State was required to prove beyond a reasonable doubt that he recklessly killed Delk. I.C. § 35-42-1-5. Buckingham argues that the State failed to prove that his conduct caused or contributed to Delk's death. To establish causation, the State must show that the defendant's conduct "contributed mediately or immediately to the death of another person." Warner v. State, 577 N.E.2d 267, 270 (Ind. Ct. App. 1991). In other words, the defendant is responsible for the victim's death if his conduct "contributed to the death of the person injured. The fact that other causes may also have contributed to the death does not relieve the actor of responsibility." Bivins v. State, 254 Ind. 184, 188, 258 N.E.2d 644, 646 (1970).

Buckingham first argues, again, that the State failed to establish that he delivered Methadone to Delk. As noted above, however, we have concluded that the State presented sufficient circumstantial evidence that Buckingham did provide the drug to Delk.

Buckingham next contends that the State did not present sufficient evidence that he delivered a sufficient quantity of Methadone to Delk to cause his death. He also insists that the presence of other drugs in Delk's bloodstream means that the State did not establish that the Methadone caused Delk's death. The State presented evidence that Buckingham delivered a substantial quantity of Methadone to Delk over the course of three days. It also offered expert testimony that Delk died of a drug overdose, with Methadone being the "main

culprit." Appellee's Br. p. 8. This is sufficient evidence to establish that Buckingham's conduct contributed to Delk's death. Buckingham's arguments to the contrary are improper requests that we reweigh the evidence. We find, therefore, that the State presented sufficient evidence to support Buckingham's reckless homicide conviction.

III. Sentences

Finally, Buckingham argues that the sentences imposed by the trial court are inappropriate in light of the nature of the offenses and his character. The trial court imposed fifteen-year sentences for Buckingham's class B felony convictions, which is greater than the advisory sentence of ten years but less than the maximum sentence of twenty years. Ind. Code § 35-50-2-5. Additionally, the trial court imposed six-year sentences for Buckingham's class C felony convictions, which is greater than the advisory sentence of four years but less than the maximum sentence of eight years. I.C. § 35-50-2-6. The trial court ordered some sentences served consecutively and some served concurrently, for an aggregate sentence of fifty-one years imprisonment.

As to the nature of Buckingham's offenses, he delivered a substantial quantity of Methadone and Valium to Delk and Gray over the course of three days. Buckingham continued to provide the drugs to the two men despite indications that Delk had already consumed too much of the substances, namely, Delk's frequent "dozing off." Tr. p. 220. Delk died from a drug overdose, with the primary culprit being a lethal concentration of Methadone in his bloodstream.

As to Buckingham's character, he has had numerous past brushes with the law. Specifically, he has amassed convictions for class A misdemeanor driving under the influence, class B misdemeanor public intoxication, class A misdemeanor operating a vehicle with a BAC of .10 or greater, class A misdemeanor resisting law enforcement, class D felony criminal recklessness, class A misdemeanor attempted residential entry, and class A misdemeanor battery. He has also violated probation multiple times and was on probation at the time he committed the instant offense. Additionally, the trial court found that Buckingham's expressions of remorse were insincere and that his lack of remorse showed contempt for the rules of law and the value of human life. We see no reason to credit Buckingham's insistence that his remorse was genuine over the trial court's conclusion that it was not when the trial court had the opportunity to observe and evaluate Buckingham in person. Under these circumstances, we find that the sentences imposed by the trial court are not inappropriate in light of the nature of the offenses and Buckingham's character.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.